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EXTRAORDINARY

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प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 8th November, 1995/Kartika 17, 1917 (Saka)

The following President's Act is published for general information:—

THE JAMMU AND KASHMIR REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT) ACT, 1995

No. 4 OF 1995

Enacted by the President in the Forty-Sixth Year of the Republic of India.

An Act further to amend the Jammu and Kashmir Representation of the
People Act, 1957.

In exercise of the powers conferred by section 3 of the Jammu and Kashmir State
Legislature (Delegation of Powers) Act, 1992, the President is pleased to enact as
follows;—

1. (1) This Act may be called the Jammu and Kashmir Representation of the People
(Second Amendment) Act, 1995.

Short title and
commencement.

(2) It shall come into force at once.

2. In the Jammu and Kashmir Representation of the People Act, 1957 (hereinafter
referred to as the principal Act), after section 9, the following section shall be inserted,
namely:—

Insertion of new
section 9A in Jammu
and Kashmir Act IV
of 1957

"9A. The officers referred to in this Part and any other officer or staff
employed in connection with the preparation, revision and correction of the electoral
rolls for, and the conduct of, all elections shall be deemed to be on deputation to
the Election Commission for the period during which they are so employed and
such officers and staff shall, during that period, be subject to the control,
superintendence and discipline of the Election Commission."

Chief Electoral
Officers, District
Election Officers, etc.
deemed to be on
deputation to
Election
Commission

Amendment of
section 33.

3. In section 33 of the principal Act, in sub-section (7) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that nothing in this section shall prevent the Election Commission from appointing the same person to be the assistant returning officer for more than one constituency."

Insertion of new
section 36A.

4. After section 36 of the principal Act, the following section shall be inserted, namely:—

Provision of polling
station!! outside the
territorial limits of a
constituency for
security reasons.

"36A. (1) Notwithstanding anything contained in section 36, the district election officer shall, with the previous approval of the Election Commission, provide polling stations, outside the territorial limits of the constituency lying within his jurisdiction, to enable such class of persons of that constituency as may be notified under sub-section (2) to vote at an election.

(2) The Election Commission may, in consultation with the Government, by notification in the Gazette, specify such class of persons for the purposes of sub-section (1) who for reasons of security are not in a position to give their votes in the polling stations provided under section 36."

Insertion of new
section 39A.

5. After section 39 of the principal Act, the following section shall be inserted, namely:—

Returning Officer,
Presiding Officer,
etc., deemed to be on
deputation to (he
Election
Commission.

"39A. The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer, designated for the time being by the Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officer shall during that period be subject to the control, superintendence and discipline of the Election Commission."

Insertion of new
section 68A.

6. After section 68 of the principal Act, the following section shall be inserted, namely:—

Adjournment of poll
or countermanding
of election on
grounds of booth
capturing.

"68A. (1) If at any election,—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,

the returning officer shall forthwith report the matter to the Election Commission.

(2) In every case referred to in clause (a) or clause (b) sub-section (1), the Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) or otherwise, after taking all material circumstances into account, either—

(a) declare that the poll at that polling station be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a

manner as to affect the result of the election, declare that the poll in that constituency be void, appoint a day and fix the hours for taking fresh poll in that constituency and notify the date so appointed and the hours so fixed in such manner as it may deem fit or countermand the election in that constituency.

Explanation.— In this section, 'booth capturing' shall have the same meaning as in section 142A."

7. In section 70 of the principal Act, after clause (b), the following clause shall be inserted, namely:—

Amendment of section 70.

"(c) any class of persons notified by the Election Commission in consultation with the Government to give their votes by postal ballot and not in any other manner at an election in a constituency where a poll is taken subject to the fulfilment of such requirements as may be specified in those rules."

8. In section 85 of the principal Act, in sub-section (1), the following Explanations shall be inserted, namely:—

Amendment of section 85.

"Explanation I.— Any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section.

Explanation II.— For the removal of doubt, it is hereby declared that any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 132 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section."

9. In section 132 of the principal Act,—

Amendment of section 132.

(a) in clause (7), the following proviso shall be inserted, namely:—

"Provided that where any person in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to or in relations to any candidate or his election agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held % the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election."

(b) after clause (7) the following clause shall be inserted, namely:—

"(8) Booth capturing by a candidate or his agent or other person".

10. After section 142 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 142A.

"142A. (J) Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

Offence of booth capturing.

Explanation,—For the purpose of this section, 'booth capturing' includes, among other things, all or any of the activities, namely:—

(a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote;

(c) coercing or intimidating or threatening, directly or indirectly any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of the Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.

(2) An offence punishable under sub-section (J) shall be cognizable."

SHANKER DAYAL SHARMA,
President,

K.L. MOHANPURIA,
Secy, to the Govt. of India.

Reasons for the Enactment

Elections to the Legislative Assembly of Jammu and Kashmir are held in terms of the provisions contained in the Jammu and Kashmir Representation of the People Act, 1957. Elections to Legislatures of other States and to the Parliament are held in accordance with the provisions contained in the Representation of the People Act, 1950 and the representation of the People Act, 1951. To facilitate the smooth holding of Assembly elections in the State of Jammu and Kashmir, it is considered necessary that certain provisions of the State Act be brought at par with the provisions in the Central Acts as also to incorporate certain other amendments.

2. Some of the important amendments included in **the Bill**,—

- (a) empower the Election Commission to declare void or countermand an election in case of booth capturing;
- (b) make booth capturing a corrupt practice and an electoral offence;
- (c) make provision for non-inclusion of expenses incurred by a political party, etc. in the expenditure of a candidate in connection with election incurred or authorised by the candidate or his election agent;
- (d) provide that any arrangement, etc. made by any Government servant belonging to any one of the specified classes in discharge of his official duty shall not be deemed to be assistance in furtherance of the prospects of a candidate;
- (e) provide that certain categories of officers employed for election-related duties shall be deemed to be on deputation to Election Commission;
- (f) provide for setting up of polling stations outside the territorial limits of a constituency to enable a specified class of voters to cast their votes;
- (g) extend the facility of postal ballot to specified categories of voters, etc.

3. The President issued a proclamation in relation to the State of Jammu and Kashmir on the 18th July, 1990 under article 356 of the Constitution to the effect, inter alia that the powers of the Legislature of the State shall be exercised by or under the authority of Parliament. Parliament has, under article 357(1) of the Constitution, conferred on the President the powers of the Legislature of the State of Jammu and Kashmir to make laws vide the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992 (21 of 1992).

4. Under the proviso to sub-section (2) of section 3 of the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992, the President shall, before enacting any President's Act, whenever he considers it practicable to do so, consult a Committee constituted for the purpose, consisting of members of both Houses of Parliament. In view of the urgency of the matter, it is not practicable to consult the Committee. This Bill is, accordingly, being enacted without reference to the Committee.

K.L. MOHANPURIA,
Secy, to the Govt. of India,
Ministry of Law, Justice and Company Affairs
(Legislative Department).

